

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

**FAO No.9799 of 2014 (O&M).
Date of Decision: 22.03.2016.**

Phoolwati and others

....Appellants.

VERSUS

Jai Parkash and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Ram Pal Verma, Advocate for the appellants.

Mr. H.N. Sahu, Advocate for
Mr. Jitender Nara, Advocate for respondent No.2.

Mrs. Vandana Malhotra, Advocate for respondent No.3.

SNEH PRASHAR, J.

CM-21179-80-CII-2014

There being delay of 29 days in filing and 136 days in refiling the appeal, separate applications under Section 5 of the Limitation Act and under Section 151 of the Code of Civil Procedure for condonation of delay were filed by the appellants.

Considering the averments made in the applications, the delay is condoned and the applications are disposed of.

FAO-9799-2014

By way of this appeal, appellants-Phoolwati and others seek

enhancement of compensation awarded to them by learned Motor Accident Claims Tribunal, Sonipat (for short, “the Tribunal”) vide award dated 27.11.2013 passed in MVA Petition No.53 of 21.01.2013 on account of death of Karan Singh (husband of appellant No.1 and father of appellants No.2 to 4), who lost his life in a vehicular accident.

The submissions made by Mr. Ram Pal Verma, learned counsel for the appellants, Mr. H.N. Sahu, learned counsel for respondent No.2 and Mrs. Vandana Malhotra, learned counsel for respondent No.3-insurance company have been heard and record perused.

The claim petition invoking the provisions of Section 166 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) was filed by the appellants pleading that on 14.04.2012 the motorcycle on which Karan Singh (since deceased) was travelling as a pillion rider and was being driven by his nephew Parveen was hit by truck bearing registration No.HR-55F-5226 being driven rashly, negligently and in a high speed by Jai Parkash (respondent No.1). A First Information Report No.118 dated 15.04.2012 was registered under Sections 279/337/304-A of the Indian Penal Code at Police Station Kharkhoda on the statement of Parveen, an eyewitness of the accident.

The driver, owner and insurer (respondents No.1 to 3) of the offending motorcycle contested the petition. On the basis of the pleadings of the parties, issues were settled. Both the parties adduced evidence in discharge of the onus on them. Considering the evidence led by the parties and the submissions made on their behalf, learned Tribunal allowed the

petition and awarded Rs.2,97,600/- as compensation to the appellants alongwith interest at the rate of 9% per annum from the date of filing the petition till realization.

Feeling unsatisfied with the award, the appellants preferred the instant appeal.

Learned counsel for the appellants argued that deceased Karan Singh was a mason and used to do business of supplying building material on commission basis and earn approximately Rs.20,000/- per month, but learned Tribunal erred in assessing his income as only Rs.4500/- per month and also wrongly deducted 1/3rd of the income towards personal and living expenses of the deceased when the claimants were four in number. The amount awarded by learned Tribunal for loss of consortium, funeral expenses, loss of love and affection etc. is on the lower side.

Except for the oral evidence in the shape of deposition of PW2 Phoopati and PW3 Parveen Kumar, no substantive and reliable evidence could be produced by the appellants to prove the income of the deceased. Considering the deceased as a labourer and keeping in view the minimum wages payable to a labourer in the year 2012, learned Tribunal rightly assessed the notional income of the deceased as Rs.4500/- per month which comes to Rs.54,000/- per annum and the said finding needs no modification. The age of the deceased being between 61-65 years, the multiplier of '7' was rightly applied.

It had come in the statement of appellant Phoolwati-PW1 that she has three sons and all are major. All the three children being major and

independent, in the considered opinion of this Court, the deduction of 1/3rd from the income of the deceased towards his personal and living expenses is not required to be disturbed. Considering the age of the deceased, the multiplier of '7' was rightly chosen and the finding of learned Tribunal awarding an amount of Rs.2,52,000/- as loss of dependency is upheld.

However, the amount awarded towards funeral expenses, loss of estate and loss of consortium is on the lower side. The amount of Rs.10,000/- given as funeral expenses is enhanced to Rs.25,000/-, the amount of Rs.10,000/- allowed towards loss of estate is enhanced to Rs.20,000/- and the amount of Rs.25,000/- awarded as loss of consortium is enhanced to Rs.1,00,000/-.

Accordingly, the appeal filed by the appellants-claimants is partly allowed and the award dated 27.11.2013 passed by learned Tribunal is modified. The enhanced compensation of Rs.1,00,000/- shall be deposited by the respondents within 45 days from the date of receipt of certified copy of this judgment failing which the appellants-claimants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing the appeal till realization.

(SNEH PRASHAR)
JUDGE

22.03.2016.
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